

AMENDED IN ASSEMBLY AUGUST 21, 2006

AMENDED IN ASSEMBLY JUNE 20, 2006

AMENDED IN ASSEMBLY JUNE 13, 2006

AMENDED IN SENATE MARCH 27, 2006

SENATE BILL

No. 1395

Introduced by Senator Ducheny

February 22, 2006

An act to add Section 21099 to the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 1395, as amended, Ducheny. Environmental quality: Native American sites.

(1) The California Environmental Quality Act (CEQA) requires a lead agency to evaluate whether an activity is a project subject to CEQA or comes within an exemption, and if the activity is determined to be a project to prepare, or cause to be prepared, and certify the completion of, an environmental impact report or to adopt a negative declaration, as required. CEQA provides for specified exemptions from its provisions.

~~This bill would require a lead agency that determines that a project is exempt from CEQA and may have a direct or reasonably foreseeable indirect affect on a California Native American prehistoric, archeological, cultural, spiritual, or ceremonial place, as specified, to notify, as specified, the Native American tribes identified by the Native American Heritage Commission. The bill would require, where a notified tribe requests consultation for a project with a timeline that exceeds 30 days, the lead agency to begin and complete~~

~~the consultation within a specified time period. The consultation would be for the purpose of protecting that place regarding the potential direct or reasonably foreseeable indirect effects by the proposed project.~~

This bill would require a lead agency that determines that a project is exempt from CEQA for one of various specified reasons to notify in writing, within 10 days of that determination, all Native American tribes identified by the California Native American Heritage Commission as having an interest in the area that includes the site of the project, of specified information, including the location and a description of the project, a brief explanation of why the project was determined to be exempt from CEQA, and a single point of contact at the lead agency for use by a tribe to contact the lead agency about the exemption or project. The bill would require the single point of contact to be available to a Native American tribe regarding the exemption, project, or area that includes the site of the project, as specified.

(2) Because this bill would impose new duties on local governments with respect to consulting with a Native American tribe and providing the tribe with a notice of exemption, the bill would create a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 21099 is added to the Public Resources
- 2 Code, to read:
- 3 21099. ~~If a lead agency determines that a project is exempt~~
- 4 ~~from this division and may have a direct or reasonably~~
- 5 ~~foreseeable indirect effect on a California Native American~~
- 6 ~~prehistoric, archeological, cultural, spiritual, or ceremonial place,~~
- 7 ~~as described in Sections 5097.9 and 5097.993, or listed or~~
- 8 ~~determined eligible for listing on the California or National~~

1 ~~Registers of Historic Places, the lead agency shall do the~~
2 ~~following:~~

3 ~~(a) Within 10 days of the determination that the project is~~
4 ~~exempt from this division, notify in writing all Native American~~
5 ~~tribes, identified by the California Native American Heritage~~
6 ~~Commission regarding this site, of the following:~~

7 ~~(1) The location of the project.~~

8 ~~(2) A description of the project.~~

9 ~~(3) Identification and a brief explanation of the applicable~~
10 ~~exemptions to this division.~~

11 ~~(4) A single point of contact at the lead agency for use by a~~
12 ~~tribe should they wish to consult with the lead agency on the~~
13 ~~project.~~

14 ~~(b) (1) If a tribe notified pursuant to this section contacts the~~
15 ~~lead agency to request consultation for a project with a timeline~~
16 ~~for design, planning, and construction that exceeds 30 days, the~~
17 ~~lead agency shall begin consultation within 15 days of the~~
18 ~~determination of exemption and complete consultation within 30~~
19 ~~days of the determination of exemption. Consultation is for the~~
20 ~~purpose of protecting that California Native American~~
21 ~~prehistoric, archeological, cultural, spiritual, or ceremonial place,~~
22 ~~regarding the potential direct or reasonably foreseeable indirect~~
23 ~~effect on that place by the proposed project.~~

24 ~~(2) For purposes of this section, consultation means the~~
25 ~~meaningful and timely process of seeking, discussing, and~~
26 ~~considering carefully the views of others, in a manner that is~~
27 ~~cognizant of all parties' cultural values, and where feasible,~~
28 ~~seeking agreement. Consultation includes recognizing a tribe's~~
29 ~~potential need for confidentiality with respect to places that have~~
30 ~~traditional tribal cultural significance.~~

31 *21099. If a lead agency determines that a project is exempt*
32 *from this division pursuant to paragraph (2), (3), or (4) of*
33 *subdivision (b) of Section 21080, or Section 21080.13 or*
34 *21080.33, the lead agency, within 10 days of the determination,*
35 *shall notify in writing all Native American tribes identified by the*
36 *California Native American Heritage Commission as having an*
37 *interest in the area that includes the site of the project, of all of*
38 *the following:*

39 *(a) The location of the project.*

40 *(b) A description of the project.*

1 (c) *Identification and a brief explanation of why the project*
2 *was determined to be exempt from this division.*

3 (d)(1) *A single point of contact at the lead agency for use by a*
4 *tribe to contact the lead agency about the exemption or the*
5 *project.*

6 (2) *The single point of contact, upon a request by a Native*
7 *American tribe, shall be available to exchange information and*
8 *comments, as well as accept and consider information that a*
9 *tribe may submit regarding the exemption, project, or the Native*
10 *American tribe's interest in the area that includes the site of the*
11 *project, unless these activities directly impede preventing or*
12 *mitigating an emergency.*

13 SEC. 2. No reimbursement is required by this act pursuant to
14 Section 6 of Article XIII B of the California Constitution because
15 a local agency or school district has the authority to levy service
16 charges, fees, or assessments sufficient to pay for the program or
17 level of service mandated by this act, within the meaning of
18 Section 17556 of the Government Code.